

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC HEARING  
ARM 24.165.404 applications, 24.165.501 ) ON PROPOSED AMENDMENT  
supervision, 24.165.509 instruction, )  
24.165.510 training, 24.165.513 modalities, )  
and 24.165.2301 unprofessional conduct )

TO: All Concerned Persons

1. On June 28, 2007, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice (board) no later than 5:00 p.m., on June 22, 2007, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdotp@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.165.404 APPLICATIONS FOR LICENSURE (1) Applications for an original license or temporary practice permit must be made on forms provided by the department and completed and signed by the applicant, ~~with the signature acknowledged before a notary public.~~

(2) through (8) remain the same.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-302, MCA

REASON: The department has determined and the board agrees that the requirement for applications to be notarized is not necessary. In anticipation of and to further facilitate the online submission of license applications, the board will no longer require the signature or content to be notarized on any application.

24.165.501 SUPERVISION - GENERAL STATEMENT (1) remains the same.

(2) A fully-licensed occupational therapist shall not require supervision except for the direct supervision required for proctored treatments.

(3) A certified occupational therapist assistant, in accordance with 37-24-103~~(2)~~, MCA, shall work under the general supervision of a licensed occupational therapist.

(4) Temporary practice permit holders under 37-1-305~~(2)~~, MCA, shall work under the routine supervision of a certified occupational therapist assistant or a licensed occupational therapist.

(5) remains the same.

(6) Occupational therapy aides under 37-24-103~~(6)~~, MCA, shall work under the direct supervision of a licensed occupational therapist or a certified occupational therapist assistant. Occupational therapy aides shall have no supervisory capacity.

AUTH: 37-1-131, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-305, 37-24-103, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to amend this rule and clarify that direct supervision is required when licensed occupational therapists complete proctored treatments required to utilize sound and electrical physical agent modalities and techniques using topical medications. The board determined that the current rule is confusing and potentially misleading to licensees. The rule is further amended to delete internal references to specific MCA sections to comply with ARM formatting rules and reduce the incorrect references in rule that must be changed following amendment of the referenced statute. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.165.509 APPROVED INSTRUCTION (1) through (1)(d) remain the same.

(e) self-study course work pursuant to ARM 24.165.2101~~(4)~~.

(2) and (3) remain the same.

(4) The instructor must be preapproved by the board and shall submit proof that the instructor:

(a) is a Montana licensed professional allowed to use sound and electrical physical agent modalities or superficial physical agent modalities; and

(b) has more than one year of clinical experience in the use of sound and electrical physical agent modalities or superficial physical agent modalities.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-24-105, 37-24-106, 37-24-107, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that providers of didactic instruction for sound and electrical physical agent modalities and superficial physical agent modalities must be preapproved by the board. The board is amending this rule to address applicant confusion regarding the board's approval process and the requirements for instructor approval.

The board is also deleting an internal reference to a specific rule section to comply with ARM formatting rules and reduce the number of incorrect references that must be changed following amendment of the referenced rule. Authority cites

are being amended to accurately provide the complete sources of the board's rulemaking authority.

24.165.510 APPROVED TRAINING (1) The term "training" ~~includes~~ refers to proctored learning sessions provided ~~via~~ by example and observation by a qualified person.

(2) remains the same.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-24-105, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to amend the definition of "training" in this rule for increased clarity and ease of use. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.165.513 APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES (1) through (1)(c)(ii) remain the same.

(A) five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices; and

(B) five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices; ; and

(C) two proctored treatments equal one hour of instruction or training for the purpose of 37-24-106, MCA. No more than five hours of proctored treatments may count toward the 40 hour instruction or training requirement in sound and electrical physical agent modalities.

(2) remains the same.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to amend this rule to address board acceptance of proctored treatments as a portion of required instruction and training. The board concluded that the available board approved courses on sound and electrical physical agent modalities do not provide a full 20 hours of instruction or training and are offered out of state and are not readily accessible to Montana licensees. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.165.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing Title 37, chapter 1, MCA, and in addition to the provisions at 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (15) remain the same but are renumbered (a) through (o).

~~(16)~~ (p) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(17) through (28) remain the same but are renumbered (q) through (ab).

~~(29) (ac) failing to obtain informed consent from client or client's representative prior to providing any therapeutic intervention; or American society of hand therapists and 100 treatments under instructor proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor. The instructor must be pre-approved by the board and show certificate of proof of being a licensed professional allowed to use deep modalities who has more than one year clinical experience in the use of deep modalities, an occupational therapist, registered and certified in providing sound and electrical modalities.~~

(ad) failing to complete 40 hours of instruction or training under proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor;

(30) and (31) remain the same but are renumbered (ae) and (af).

~~(32) (ag) ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;~~

~~(33) (ah) failing to provide to a client, client's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the client which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;~~

~~(34) (ai) sexual, verbal, or mental abuse of a client;~~

(35) remains the same but is renumbered (aj).

~~(36) (ak) engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client during a period of time in which a professional relationship exists, or for up to six months after the relationship has terminated;~~

(37) remains the same but is renumbered (al).

~~(38) (am) Failure failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.165.2101 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee.~~

AUTH: 37-1-131, 37-1-136, ~~37-1-307, 37-1-316~~, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-136, 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, 37-1-316, 37-24-106, 37-24-107, 37-24-202, MCA

**REASON:** The board determined it was reasonably necessary to amend this rule and move the provision on board approval of instructors to ARM 24.165.509 as a more appropriate location. The board is striking the 100 treatment requirement because it is out-of-date and was replaced by the 40 hours of instruction or training in 2003 at 37-24-106, MCA. The board is adding (1)(ad) to address violations of the current 40 hour requirement. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov), and must be received no later than 5:00 p.m., July 6, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.ot.mt.gov](http://www.ot.mt.gov). The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov), or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on April 19, 2007, by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
DEB AMMONDSON, OTR, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 29, 2007